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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

29 UNITED STATES OF AMERICA,
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31 Plaintiff,
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33 SAN FRANCISCO BAYKEEPER,
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35 Intervenor-Plaintiff,
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37 v.
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39 CITY OF ALAMEDA, et al.,
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41 Defendants.

Civil Case No.: CV 09-5684 RS

STIPULATION AND ~~PROPOSED~~
ORDER TO WITHDRAW
INTERVENTION OPPOSITION, ACCEPT
SERVICE, AND LIMIT CLAIMS IN
INTERVENTION

STIPULATION

Whereas, on December 3, 2009, the United States of America, on behalf of the Environmental Protection Agency, filed a complaint against the City of Alameda, City of Albany, City of Berkeley, City of Emeryville, City of Oakland, City of Piedmont and the Stege Sanitary District (collectively, "Satellites" or "Defendants") pursuant to Section 309 of the Clean Water Act (this "Action"), which complaint has not yet been served on Defendants;

Whereas, on December 22, 2009, San Francisco Baykeeper ("Baykeeper" or "Intervenor") filed a Notice of Motion and Motion to Intervene in this Action;

Whereas, on January 22, 2010, the Court granted Baykeeper's Motion to Intervene, prior to the deadline set forth in the Clerk's January 13, 2010 Notice for filing an opposition to Baykeeper's Motion to Intervene;

Whereas, on January 28, 2010, Baykeeper filed a Complaint in Intervention, and served the Complaint in Intervention upon the Satellites, the California State Water Resources Control Board, and the California Regional Water Quality Control Board, San Francisco Bay Region, via U.S. Mail, and upon the United States via United States District Court Electronic Filing service (collectively "Parties");

Whereas, on January 29, 2010, Defendants timely filed a Joint Memorandum of Points and Authorities in Opposition to Baykeeper's Motion to Intervene, and on February 11, 2010, Baykeeper timely filed a Reply to Defendants' Joint Opposition;

Whereas, on February 10, 2010, the Court entered as an Order the Parties' Stipulation to Stay litigation, which Order allowed for the Court to rule on Baykeeper's Motion to Intervene and January 22, 2010 Order during the stay period;

Whereas, on May 26, 2010, the Court entered as an Order the Parties' Stipulation to extend the stay period to October 8, 2010, to enable the Parties to continue settlement negotiations, which settlement negotiations are ongoing;

Whereas, to facilitate any potential settlement of this Action, the Parties desire to resolve any uncertainty regarding Baykeeper's Motion to Intervene and Complaint in Intervention;

THE PARTIES HEREBY STIPULATE THAT:

1. Defendants withdraw their January 29, 2010, Joint Memorandum of Points and Authorities in Opposition to San Francisco Baykeeper's Motion to Intervene, and do not oppose Baykeeper's intervention in this Action.
2. Each Party has been served with Baykeeper's Complaint in Intervention in satisfaction of the Federal Rules of Civil Procedure, and no Party will raise as a defense or objection to Baykeeper's Complaint in Intervention, the adequacy or timing of service of Baykeeper's Complaint in Intervention.
3. The time for Defendants to respond in any way to Baykeeper's Complaint in Intervention shall be tolled while the present stay is in effect and Baykeeper shall not raise lack of timeliness as a defense or objection to the Defendants' responses.
4. Baykeeper's claims in this Action shall be limited to the claims in the United States' December 3, 2009 complaint, as such complaint may be amended, including but not limited to, include claims of the California State Water Resources Control Board and the California Regional Water Quality Control Board, San Francisco Bay Region, in this Action.

Dated: August 24, 2010

/S/ Jason Flanders

Jason Flanders
San Francisco Baykeeper
For Intervenor-Plaintiff

/S/ Michelle Kenyon

Michelle Kenyon
City Attorney
For Defendant City of Piedmont

/S/ Ellen J. Garber

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For Defendant City of Alameda

/S/ Kenton L. Alm

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City of Albany and Stege Sanitary District

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~~[PROPOSED]~~ ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.



U.S. District Court Judge

8/26/10

Date